

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 CUC DANG,

5 PLAINTIFF,

CASE NO. CV-10-02181-RMW

6 VS.

SAN JOSE, CALIFORNIA

7 SUTTER'S PLACE, INC., DBA BAY
101 OR BAY 101 CASINO, UNITE
8 HERE! LOCAL 19, AND DOES 1
THROUGH 20, INCLUSIVE,

MAY 8, 2013

VOLUME 6

PAGES 680 - 685

9 DEFENDANTS.
10

11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE RONALD M. WHYTE
13 UNITED STATES DISTRICT JUDGE AND A JURY

14 A-P-P-E-A-R-A-N-C-E-S

15 FOR THE PLAINTIFF: ROBINSON & WOOD, INC.
BY: ANN A.P. NGUYEN
227 NORTH FIRST STREET
16 SAN JOSE, CALIFORNIA 95113

17 ALSO PRESENT: ANDRE THOMAS

18 FOR THE DEFENDANTS: MCMANIS FAULKNER
BY: JAMES MCMANIS
19 JENNIFER MURAKAMI
FAIRMONT PLAZA
20 10TH FLOOR
50 W. SAN FERNANDO STREET
21 SAN JOSE, CALIFORNIA 95113

22 ALSO PRESENT: CINDY MCCLELEN

23 OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, CRR
24 CERTIFICATE NUMBER 8074

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

MAY 8, 2013

2 P R O C E E D I N G S

3
4 (JURY OUT AT 8:47 A.M.)

5 THE COURT: GOOD MORNING. WE HAVE A JUROR THAT
6 CALLED IN AND LEFT A MESSAGE THAT SHE WAS SICK AND SHE WASN'T
7 COMING IN TODAY. WE HAVE CALLED BACK AND HAVE NOT BEEN ABLE TO
8 REACH HER.

9 SO THE QUESTION IS WHETHER WE KNOCK OFF TODAY AND HOPE
10 THAT SHE'S AVAILABLE TOMORROW OR WE GO WITH SEVEN JURORS.

11 MR. MCMANIS: MAY I INQUIRE WHO IS THE JUROR THAT
12 CALLED IN ILL?

13 THE COURT: MS. --

14 THE CLERK: MS. GARCIA, MICHELLE GARCIA. THE RED
15 HEAD IN THE FRONT ROW.

16 MR. MCMANIS: I KNOW WHO SHE IS, THANK YOU. YOUR
17 SISTER-IN-LAW.

18 MAYBE I COULD ASK THROUGH THE COURT OF COUNSEL WHEN SHE
19 EXPECTS TO FINISH HER CASE?

20 MS. NGUYEN: WELL, IF WE GET TO GO TODAY, YOUR
21 HONOR, WE EXPECT TO FINISH TOMORROW EXCEPT FOR THE MANAGEMENT
22 EXPERT WHO HAS TO BE FIT IN NEXT MONDAY, BUT I WOULD LIKE TO
23 CONFER WITH MY CLIENT AND ALSO MY WITNESS OUTSIDE WITH RESPECT
24 TO TODAY'S SCHEDULE BECAUSE --

25 THE COURT: YOU CAN DO THAT. I DO WANT TO MAKE A

1 DECISION FAIRLY QUICKLY BECAUSE I DON'T WANT TO KEEP THE JURY
2 HERE WAITING TO GO HOME OR WAITING TO HEAR TESTIMONY.

3 MR. MCMANIS: I'LL TALK TO MY FOLKS, TOO.

4 THE COURT: ALL RIGHT.

5 MS. NGUYEN: BUT YOU'RE WILLING TO GO FORWARD IF WE
6 ARE WILLING?

7 THE COURT: OH, YEAH.

8 MS. NGUYEN: THANK YOU, YOUR HONOR.

9 THE COURT: THAT MIGHT BE MY INCLINATION, BUT WE'LL
10 SEE IF YOU CAN REACH AN AGREEMENT FIRST.

11 MR. MCMANIS: THANK YOU.

12 (RECESS FROM 8:48 A.M. UNTIL 8:52 A.M.)

13 MS. NGUYEN: YOUR HONOR, WE'RE READY. WE'RE
14 ACTUALLY WILLING TO GO FORWARD WITHOUT MS. GARCIA.

15 I HAVE A WITNESS HERE. SHE'S COME DOWN FROM BERKELEY. WE
16 HAVE TO SCHEDULE HER AROUND HER EXAMS AND WORK, AND SHE SAID
17 SHE HAS EXAMS ALL NEXT WEEK. SO I NEED TO GET HER IN TODAY AND
18 GET HER OUT OF HERE.

19 MR. MCMANIS: WELL, I'M SORRY TO HEAR THAT. AND IF
20 THIS IS LISA WONG, THE DAUGHTER, I'M NOT SURE WHAT I KNOW ABOUT
21 HER CIRCUMSTANCES THAT THAT -- THAT IT MERITS SPECIAL
22 CONSIDERATION.

23 WE WOULD OBJECT TO EXCUSING MS. GARCIA, ESPECIALLY UNDER
24 THE CIRCUMSTANCES. I THINK THE TRIAL HAS MOVED ALONG AT A GOOD
25 PACE, AND I THINK WE CAN FINISH ON TIME.

1 AND SO I WOULD ASK ON BEHALF OF THE DEFENDANT THAT WE
2 RECESS TODAY AND RESUME TOMORROW MORNING.

3 THE COURT: WHAT IS -- I'M NOT SURE OF HER LAST
4 NAME. WHAT IS HER LAST NAME?

5 MS. NGUYEN: LISA WONG.

6 THE COURT: WHAT IS HER SCHEDULE?

7 MS. NGUYEN: SO SHE HAS TO GO BACK FOR AN EXAM THIS
8 AFTERNOON, AND SHE WAS ABLE TO ASK HER BOSS OFF FOR TIME FROM
9 WORK TODAY.

10 AND IN THE MORNING TOMORROW SHE HAS TO PREPARE FOR EXAMS
11 AND WORK IN THE AFTERNOON, AND THEN ALL NEXT WEEK SHE HAS
12 EXAMS.

13 THE COURT: AND EXAMS EVERY DAY NEXT WEEK?

14 MS. NGUYEN: I DIDN'T GET THE EXACT DATES, BUT SHE
15 HAS EXAMS AND WORK.

16 THE COURT: WHY DON'T YOU CHECK WITH HER ABOUT
17 MONDAY AFTERNOON.

18 MS. NGUYEN: I'LL CHECK.

19 (PAUSE IN PROCEEDINGS.)

20 MS. NGUYEN: SO, YOUR HONOR, WITH RESPECT TO
21 MS. WONG, WE TRIED TO WORK AROUND ALL OF HER DIFFERENT CLASSES
22 AND WORK. SHE CAN COME IN AT 11:30 ON TUESDAY. THAT'S -- WE
23 HAVE TO FIT HER IN THERE IF WE ARE GOING TO.

24 MR. MCMANIS: WE HAVE NO OBJECTION TO THAT.

25 MS. NGUYEN: BECAUSE SHE HAS CLASS IN THE MORNING,

1 AND SHE HAS TO TRY TO GET A RIDE DOWN HERE AND THEN SHE HAS TO
2 GO BACK TO WORK.

3 AND THE INTERPRETER SAID IF SHE HAS TO COME BACK TOMORROW,
4 SHE'S BEING DISPLACED WITH FOUR JOBS THAT SHE'LL HAVE TO FIND
5 COVERAGE FOR.

6 MR. MCMANIS: WELL, I'M SURE MR. NGUYEN WHO
7 INTERPRETED YESTERDAY WILL BE AVAILABLE.

8 MS. NGUYEN: WE'D LIKE TO MAKE SURE WE GET
9 MS. LEBRUN.

10 MR. MCMANIS: WELL, I WOULD, TOO.

11 THE COURT: ALL RIGHT. WHAT WE'LL DO IS I'LL LET
12 YOU CALL HER OUT OF ORDER ON TUESDAY, AND WE WILL GO FORWARD
13 TOMORROW IF THE JUROR DOESN'T SHOW.

14 MR. MCMANIS: THAT'S FINE.

15 THE COURT: AND I'M SORRY THIS HAPPENED, BUT IT
16 HAPPENS AND THAT'S WHY WE HAVE EXTRA JURORS IN CASE WE NEED
17 THEM, BUT I JUST HATE TO DO IT WITH JUST ONE JUROR CALLING IN.

18 IF WE CAN KEEP THE FULL JURY BY DELAYING A DAY AND NOT
19 CREATING TOO MANY PROBLEMS.

20 MR. MCMANIS: THANK YOU, YOUR HONOR.

21 MS. NGUYEN: BUT YOU SAID IF COULD GO WITH JUST SIX
22 JURORS. WOULDN'T WE BE ABLE TO GO WITH SEVEN JURORS?

23 THE COURT: WE CAN. I WOULD GENERALLY LIKE TO KEEP
24 OUR JURORS INTACT IF WE CAN BECAUSE THAT'S WHAT WE AGREED ON
25 EIGHT PEOPLE, AND ALSO YOU NEVER KNOW WHAT ELSE IS GOING TO

1 HAPPEN. SO THAT'S WHY -- BUT I WON'T DELAY IT MORE UNTIL
2 TOMORROW MORNING.

3 MR. MCMANIS: THANK YOU, YOUR HONOR.

4 MS. NGUYEN: THANK YOU, YOUR HONOR.

5 ARE YOU GOING TO JUST GIVE THE MESSAGE TO THE JURY
6 BACK THERE OR ARE THEY COMING OUT HERE FOR THAT?

7 THE COURT: I WAS JUST GOING TO HAVE MS. GARCIA TELL
8 THEM.

9 MR. MCMANIS: NO, NO. THAT'S FINE. I JUST WANT TO
10 KNOW IF WE'RE FREE TO GO?

11 MS. NGUYEN: THAT'S FINE, YOUR HONOR. I JUST WANTED
12 TO NOTE THAT WE HAD ONE DEFERRED RULING FROM YOU. WE HAD
13 BROUGHT UP THE MOTION IN LIMINE ORDER WITH RESPECT TO DR. BERG
14 TO BE EQUALLY APPLICABLE TO DR. LIPIAN, AND I KNOW THAT
15 DR. LIPIAN WILL NOT BE TAKING THE STAND UNTIL AT LEAST NEXT
16 WEEK.

17 THE COURT: WELL, I, FRANKLY, FORGOT ABOUT THAT.
18 I'LL TAKE A LOOK. MY GUT REACTION IS WHAT I SAID YESTERDAY, IT
19 SEEMS LIKE IT'S BOTH WAYS, BUT --

20 MS. NGUYEN: THANK YOU, YOUR HONOR.

21 MR. MCMANIS: THANK YOU, YOUR HONOR.

22 (COURT CONCLUDED AT 9:01 A.M.)
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25

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2
3 CERTIFICATE OF REPORTER
4
5
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16 IRENE RODRIGUEZ, CSR, CRR
17 CERTIFICATE NUMBER 8076

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19 DATED: MAY 8, 2013
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